

Fernando X. Gaxiola (007754)
LAW OFFICE OF FERNANDO X. GAXIOLA
MEMBER, ARIZONA CHAPTER OF IMMIGRATION LAWYERS ASSOCIATION
(AILA)
2847 S 6th Ave, Ste 3
Tucson AZ 85713
Phone (520) 628-7898
Fax (520) 624-7468
fernando@quikhhelp.com
Commentator

IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND RULE 31 D.24 RULES OF THE ARIZONA SUPREME COURT: LEGAL DOCUMENT PREPARER	Petition No. R-13-0001 COMMENTS
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In accordance with Arizona Supreme Court Rule 28(D),
Fernando X. Gaxiola, a member of the American Immigration
Lawyers Association, Arizona Chapter, respectfully asks the
Court to leave Rule 31(D)24 as written for the following
reasons:

Petitioners seek to quash competition and deny the
public a less expensive option for the preparation of
immigration applications by trained and licensed document
preparers; they seek to have an almost complete monopoly in
the area of immigration form filling. Under ARS §12-
2701(3) the State Legislature already codifies what
constitutes "Unauthorized Practice of Immigration and
Nationality Law" and Arizona Certified Legal Document

Preparers (AZCLDPs) are not exempt from the application of this statute. Furthermore, they are authorized to prepare immigration forms only after an examination and licensing procedure administered under the authority of the Supreme Court of Arizona. Petitioners' interest in creating a monopoly for attorneys unnecessarily would deprive Arizonans access to low-cost assistance in applying, and in filling out forms to request immigration benefits.

Petitioners argue that AZCLDPs do not require lawyer training or supervision. The United States office of Citizenship and Immigration Services provides forms for the public to fill out without legal training. This is because no legal training is required. Experience and knowledge about the forms - a close study and examination of the forms and the included instruction provided by the government on the forms and on their website provides the knowledge required for completing these forms. See <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD> for a review of forms and instructions.

Petitioners further omit to note that the Supreme Court's Arizona Code of Judicial Administration

certification requirements for AZCLDP's certification include paralegal education, a degree from a law school, and employment in a law office under the supervision of a licensed attorney or an experienced AZCLDP. All of these options include some legal training. Nor do these petitioning attorneys mention that AILA Arizona Chapter refuses the participation of AZCLDPs in their CLE programs (Much to its credit, the Arizona Bar Association has extended to all AZCLDP certificate holders a member rate discount for Continuing Education courses). AZCLDPs are not assisted in their roles by AILA or any of its chapters. Training, information and expertise is available to immigration document preparers through other non-competitive organizations outside the State of Arizona. e.g. the National Immigration Justice Organization offers free and open webcasts on immigration subjects on the internet at <http://www.immigrantjustice.org/training-webcasts>.

Furthermore, contrary to Petitioners' allegations, AZCLDPs must continue their education after licensing to remain certified and are subject to discipline by the Supreme Court and the Attorney General's office if they transgress ARS §12-2701 et seq. Those involved in the

preparation of immigration forms, like those that prepare domestic forms, seek education, knowledge and training on the subjects of interest to properly serve their clients. This only makes common sense.

Petitioners point to the Code of Federal Regulations in support of their position that AZLDPs are not allowed to fill forms. 8 C.F.R. §292.1 establishes who can and who cannot represent another person before immigration authorities not who can prepare and fill forms. A non-attorney may represent another person before immigration authorities only if they are a member of a recognized or qualified organization (See C.F.R. §292.2 for Qualification of organizations); AZCLDPs may or may not be members of a qualified organization. Under the proposed amendment AZCLDPs would be prohibited from employment or volunteering their services to the federally qualified organizations authorized by federal regulation to represent and assist persons in immigration matters. Why do Petitioners seek to have AZCLDPs disqualified from working on immigration matters when employed by a qualified organization such as Social Catholic Services or the Florence Project?

Petitioners mislead this Court when it cites 8 C.F.R. §§1.1(i), (j), (k) and (m) and state that these sections of the Code of Federal Regulations are in conflict with Arizona law. These sections of the Code of Federal Regulations are not in conflict with Arizona laws or regulations. 8 C.F.R. §1 now found at 8 C.F.R. §1001 is consistent with Arizona law. 8 C.F.R. §1001(i) and A.R.S. §12-2701(a) prohibit certain person for appearing for another in immigration matters. AZCLDPs do not appear for another in any of the forms they fill out for their customer; if they do, they are in violation of federal and state laws.

For the court's convenience the language of 8 C.F.R. §1001(i) is shown here (portions are in bold text for emphasis):

The term practice means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition **on behalf of another person or client** before or with DHS, or any immigration judge, or the Board.

And for easy comparison the language of A.R.S. §12-2701(a)(3) is also shown here:

"Unauthorized practice of immigration and nationality law" means:

(a) The act of any person appearing in any case, either in person or through preparation or filing of any brief or other document,

paper, application or petition **on behalf of another person or client** before or with the immigration and naturalization service, or any officer of the immigration and naturalization service, the executive office for immigration review or the board of immigration appeals, without authorization under this chapter.

The sections of law are very similar and not in conflict with each other.

8 C.F.R. §1001(j) and (m) complement 8 C.F.R. §1001(i) as they expand on the matter of representation and authority to represent others. AZCLDPs are not allowed to represent anyone before immigration courts or process under these regulations and AZCLDPs do not appear, and should not appear for another in immigration matters.

Again, for convenience the cited statutes and regulations are printed below (Portions are in bold text for emphasis).

8 C.F.R §1001(J) reads as follows:

The term **representative** refers to a person who is entitled to represent others as provided in §§ 1292.1(a) (2), (3), (4), (5), (6), and 1292.1(b) of this chapter.

8 C.F.R. §1001(m) reads as follows:

The term **representation** before the Board and the Service includes practice and preparation as defined in paragraphs (i) and (k) of this section.

8 C.F.R. §1001(k) on the other hand is almost identical to A.R.S. §12-2701(b).

8 C.F.R. §1001(k) states (Portions are bold for emphasis):

The term *preparation*, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, **but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.**

A.R.S. §12-2701(b) reads thus:

The study of the facts of a case and the applicable laws, coupled with giving advice and auxiliary activities, including the incidental preparation of papers, without authorization under this chapter, **but does not include the lawful functions of a notary public, nonprofit organization or service consisting solely of assistance in the completion of blank spaces on printed immigration and naturalization service forms by a person whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.**

AZCLDPs do not and should not hold themselves as qualified in legal matters or in immigration and naturalization

procedure. They do and should, whenever it is true, as experienced in the filling out of immigration forms, following the instructions on those forms and assisting persons who require these services. This is what an ethical and licensed AZCLDP should do.

Petitioners seek to have Arizona enter into an area already pre-empted by federal law¹ and prohibit that which federal (and state law) allows - providing assistance in the completion of blank spaces on printed immigration and naturalization service forms by a person whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure. But they want to do this solely for the purpose of solidifying for themselves a greater monopoly in the area of filling out forms.

The procedures followed by a trained AZCLDP is that which anyone with an education can perform by following the instructions published by the Citizenship and Immigration Services website (www.uscis.gov). There is no legal advice, no studying or researching law. If an AZCLDP preparer finds there is an issue of law to be resolved, AZCLPs should always refer the matter to the Arizona State

¹ Petitioners cite *United States v. Arizona*, <http://www.supremecourt.gov/opinions/11pdf/11-182b5el.pdf>(2011) for this proposition

Bar or the local county bar referral services. Just like an ethical attorney should always advise his client or potential client that a form can be filled out by client at no cost to him by going to the USCIS web site, or if assistance by a form filler is sufficient an attorney should refer the matter to a form filler, preferably one licensed by the courts as an Arizona Certified Legal Document Preparer. After all, the client's interests are at all times above our own.

Petitioners' simplest argument is that Certified Document Preparers offer immigration form filling services in competition with lawyer provided services "and without necessarily meeting the federal requirements set forth by the Code of Federal Regulations." As noted above the regulations do not set out any federal requirements for form filling. Petitioners cite no federal law or regulation in support of their statement because there is no federal requirement for form-fillers.

Qualified non-profit religious, charitable, social service or similar organizations may be recognized to appear for others before immigration courts and officers under 8 C.F.R. 292.2. This section of the code does not require "lawyer training" but only that the organization have at its disposal adequate knowledge, information, and

experience. 8 C.F.R. 292.2(a)(2). These form-fillers do not have to be supervised or licensed by the State. The approved organization sets the hiring standards. These form-fillers are not supervised by the Supreme Court or other licensing body. Petitioners do not seek to have these charitable organizations disqualified from performing the same duties AZCLDPs perform as they do not compete with them nor is it politically smart to take on organizations like Catholic Social Services. Petitioners unintended result would make any AZCLDP ineligible for employment within a qualified organization. An Arizona regulation that caused this result would be in conflict with federal law.

Petitioners' final disingenuous argument is that AZCLDP "act in a role very similar to civil law notaries." This is not true and it is misleading. A civil notary cannot represent a party, he is an auxiliary in the administration of justice empowered to perform certain non-adversarial duties as a state functionary. See the web page of the Secretary of State of Alabama for a simple description at www.sos.state.al.us/administrativeservices/CivilLawNotaries.aspx. Another example, in the State of Michoacán in Mexico, he drafts deeds to real estate that conform to law

and protect all the parties, he drafts contracts, mortgages, and wills that protect the interests of all parties, gives no legal advice, and keeps detailed records of all notarial acts. See "Ley del Notariado" 1986 for the State of Michoacán at <http://www.cem.itesm.mx/derecho/nlegislacion/michoacan/leyes/LEY%20DEL%20NOTARIADO.doc>. Petitioners either ignore the role and function of civil law notaries or deliberately choose to misinform the court. AZCLDPs may or may not be notaries, but they are notary public not civil law notaries and as such they are also licensed and subject to controls by the state of Arizona. Petitioners do not propose to change the Arizona laws of Notary Publics.

Petitioners argue incorrectly that AZCLDPs "file papers for others in immigration matters". In fact as outlined previously, AZCLDPs cannot file any papers for others. They may address envelopes, place forms or letters within envelopes and place the envelopes and their contents in the mail box on behalf of others. They do this in family law and bankruptcies matters without appearing on behalf of others. This menial service does not entail representation. It is a simple service for persons who do not know how to mail applications or, in some cases do not know how to stamp an envelope or need help obtaining the

correct address for mailing the documents (The mailing instructions are in the forms and the USCIS web site). Some clients want this service and willing to pay for it so AZCLDPs fulfill these menial chores for them. AZCLDPs do not file appearances or represent others in any matter. If they did, federal and states prosecutors would charge them with violating federal and state laws.

Petitioners do not make a case for the amendment they seek. The rule should be left as it stands.

/s/ Fernando X. Gaxiola
Fernando X. Gaxiola

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ⁱ Fernando X. Gaxiola, Commentator herein, is part owner of Sin Abogados, Inc. dba as QuikHelp, a legal document preparation and form filling service in Tucson, Arizona. It is a licensed Certified Legal Document Preparation business.